

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U 338-E) for Authority to Lease Communication Facility Sites and Antenna Equipment Locations to AT&T Wireless Services of California, LLC (U-3010-C)

Application 01-11-043
(Filed November 21, 2001)

O P I N I O N**1. Summary**

This decision grants Southern California Edison Company (SCE) authority under Pub. Util. Code § 851 to enter into two master agreements and associated standard agreements to lease excess space at communications facilities and antenna equipment locations to AT&T Wireless Services of California, LLC and affiliated companies (AT&T Wireless). The leased space would be used by AT&T Wireless to expand its wireless communications network. In Decision (D.) 00-07-010, the Commission previously granted similar authority to SCE to lease this type of space to Pacific Bell Mobile Services. The application is unopposed.

2. Background and Summary of Request

SCE seeks approval of two master agreements that set forth the framework for leasing sites and antenna locations to AT&T Wireless. SCE and AT&T Wireless also have agreed on standard-form agreements for leasing specific sites and antenna locations. When the two parties agree on a site for placement and

operation of the communications equipment, they will execute one of the standard leases, depending on the type of site selected, as required by a master agreement.

SCE states that the agreements presented in this application are part of SCE's ongoing effort to generate additional revenues from utility assets, while also ensuring that ratepayers receive substantial benefits without risk. Each executed standard-form agreement will generate annual revenues in the amounts set forth in each standard agreement. SCE will treat the revenues billed as other operating revenue, as directed by the Commission in D.99-09-070, with part of the revenues directly benefiting ratepayers.

SCE states that the master agreements and standard-form agreements provide that no lease can take place unless its use by AT&T Wireless is compatible with current electric utility operations. SCE states that it will not lease any site that it expects to need for electric utility purposes during the term of the lease. Applicants state that they are sensitive to the Commission's concerns about compliance with environmental regulations, and that AT&T Wireless will be required to obtain all land use approvals prior to any construction. The Commission previously endorsed this procedure in D.00-07-010, where it recognized that General Order (GO) 159-A generally delegated authority to regulate the location and design of cellular facilities to local agencies.

As part of this application, SCE seeks approval to convert four site agreements and 11 antenna attachment agreements from licenses to leases. SCE also seeks advance approval to enter into standard leases to avoid filing a new application each time SCE and AT&T Wireless agree on a specific site.

3. Outline of the Agreements

The master agreement for leasing facility sites and the master agreement for leasing antenna equipment locations contain terms of general applicability, such as pricing and site selection procedures. SCE and AT&T Wireless entered into the two master agreements on October 3, 2001. While the agreements set forth key terms governing the future arrangements between the parties, they do not lease, sell or otherwise encumber any utility property. In general, the master agreements contemplate that AT&T Wireless will select utility sites that may be suitable for wireless communications equipment. Some sites are underutilized parcels of land, while others are existing SCE communications facilities or SCE-owned buildings. The master agreements do not give AT&T Wireless an option or right of first refusal on any site and allow SCE to license or lease sites on a first-come, first-served basis.

Once AT&T Wireless selects a site for its network equipment, the master agreement requires written notice to SCE with a detailed description of the equipment to be installed, power requirements and site access requirements. SCE then must preliminarily approve or reject a selected site. If SCE approves a site, it will prepare the appropriate standard lease for execution. The master agreements require AT&T Wireless to reimburse SCE for any expenses incurred in the review process.

SCE and AT&T Wireless have entered into four standard site agreements. AT&T Wireless has obtained local land use approvals or has determined that such agreements are not required, and has filed GO 159-A notices with the Commission for three of the sites. When the land use approval process is completed for the fourth site and for any future sites subject to a standard site agreement, AT&T Wireless will similarly comply with GO 159-A. The parties

also have entered into 11 antenna attachment agreements. AT&T wireless has obtained local land use approvals and has filed GO 159-A notices for four of these sites. When land use approval is completed for the other seven sites and for any future sites that are subject to a standard antenna attachment agreement, AT&T Wireless similarly is required to file GO 159-A notices.

For a specified term of the master agreements, AT&T Wireless will pay an annual rent and use fee as set forth in Exhibit A to the master agreement, depending on the nature of the site on which the attachments or facilities are located. AT&T Wireless will have unlimited access to the locations, but it may not use, generate, store or dispose of any hazardous materials at the locations, and it must observe other restrictions intended to protect SCE's electrical operations. As an additional rent, AT&T Wireless will pay SCE the amount of any increase in property taxes levied because of the improvements made by AT&T Wireless. At all times, SCE retains the right to use its facilities and any associated property for the provisions of utility services.

4. Withdrawal of Protest

The Commission's Office of Ratepayer Advocates (ORA) protested the application on January 3, 2002. ORA took issue with the request for "advance" approval of standard-form leases under the master agreements, arguing that each such lease should be subject to prior scrutiny by the Commission's environmental staff.

After investigation, however, ORA withdrew its protest on January 16. ORA stated that it had confirmed that GO 159-A, in conjunction with the Commission's holding in D.00-07-010, addresses ORA's concerns and provides appropriate notice to environmental and ORA staff for the contemplated standard-form leases.

Pursuant to GO 159-A, the Commission has delegated its authority to regulate the location and design of cellular facilities to local agencies, while retaining oversight jurisdiction in cases of conflict with the Commission's goals or statewide interests. (*See* D.96-05-035.) The agreements require SCE to apply for all required governmental permits and approvals. The Commission concluded in D.00-07-010 that pre-approval of such agreements does not trigger a separate Commission environmental review.

Citing D.00-07-010, ORA notes that AT&T Wireless is required by Section IV.A of GO 159-A to serve written notice on the Commission as local permits or approvals are granted or as findings are made that no such approval is necessary because of the minor nature of planned construction. Should permits or approvals not be granted, AT&T Wireless states that it will consider filing an application with this Commission for preemptive authority under Section VII of GO 159-A.

ORA concludes, as did the Commission in D.00-07-010, that these processes assure that proper environmental review will occur at the appropriate time upon execution of the standard-form leases. (*See* D.00-07-010, at 8.)

5. Discussion

We will grant SCE's request for approval of the master agreements and standard leases. The arrangement between SCE and AT&T Wireless makes good sense from several perspectives. We have approved similar arrangements in the past, including SCE's lease of space to Pacific Bell Mobile Services in D.00-07-010, the use of underground conduits for fiber-optic installation in D.93-04-019 and D.94-06-017, and the use of aboveground conduits in D.95-05-039. Earlier this year, we approved a similar master agreement and standard lease arrangement between AT&T Wireless and Pacific Gas and Electric Company (D.02-03-059).

The master agreements and standard leases make productive use of what is currently available space. It is reasonable for California's energy utilities, with their extensive easements, rights of way, and cable facilities, to cooperate in this manner with telecommunications utilities that seek to build an updated network. Joint use of utility facilities has obvious economic and environmental benefits. The public interest is served when utility property is used for other productive purposes without interfering with the utility's operation or affecting service to utility customers.

SCE will treat the revenues associated with the agreements in accordance with D.99-09-070, in which the Commission adopted a gross revenue sharing mechanism for certain of SCE's other operating revenues. With certain exceptions, the gross revenue sharing mechanism provides that revenues above an annual threshold level will be split 70/30 between shareholders and ratepayers according to allocation rules set forth in D.99-09-070.

The agreements provide other important benefits. To the extent that AT&T Wireless is permitted to use SCE's existing land, communications facilities and buildings, residents of areas to be served by the AT&T Wireless network will be spared the disruption of AT&T Wireless installing its own installations on other properties. Moreover, AT&T Wireless will be able to develop its network more quickly, with a corresponding benefit to telecommunications consumers.

As we have done in D.00-07-010 and D.96-10-071, we shall impose notification provisions upon SCE regarding substantive changes in the leases or plant in service, changes in rights of way affected by the standard leases, and SCE's use of AT&T Wireless facilities placed on leased sites. We also will require SCE to notify our Energy Division of the execution of each standard lease, along with a description of the site selected.

6. Uncontested Matter

In Resolution ALJ 176-3077, dated December 11, 2001, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in Resolution ALJ 176-3077.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. AT&T Wireless will pay an annual rent and use fee for the use of SCE space and antenna facilities.
2. Revenue from these leased facilities will be booked as other operating revenues, with proportionate sharing between shareholders and ratepayers pursuant to D.99-09-070.
3. The proposed agreements provide that no lease can take place until SCE determines that the lease is compatible with electric utility operations.
4. Under the agreements, AT&T Wireless will be required to apply for local use permits and to comply with applicable environmental requirements.

Conclusions of Law

1. Joint use of utility facilities should be encouraged in appropriate cases because of the obvious economic and environmental benefits.
2. The master agreements proposed by SCE, setting forth the framework for leasing an unspecified number of sites and facilities to AT&T Wireless for its wireless network, should be approved.

3. The environmental review of subsequent individual leases entered into under the master agreements is governed by GO 159-A, wherein the Commission has delegated its authority to regulate the location and design of cellular facilities to local agencies while retaining oversight jurisdiction in cases of conflict with statewide interests.

4. Because there are no outstanding issues remaining before the Commission in Application 01-11-043, the docket should be closed.

O R D E R

IT IS ORDERED that:

1. The application of Southern California Edison Company (SCE) for authority to lease communication facility sites and antenna equipment locations to AT&T Wireless Services of California, LLC (AT&T Wireless), as that transaction is more fully described in the application and its exhibits, is approved.

2. SCE shall notify the Office of Ratepayer Advocates (ORA) and the Energy Division, in writing, of all substantive amendments to, extensions of, or terminations of the agreements with AT&T Wireless described in this application.

3. SCE shall notify ORA and the Energy Division, in writing, of any substantive changes to plant in service resulting from implementation of the agreements described in the application, within 60 days of any such change.

4. SCE shall notify ORA and the Energy Division if any right of way that is the subject of the agreements ceases to be used and useful for the provision of electric service, or if there are any substantive changes in the right-of-way

segments which are the subject of the agreements described in the application, within 30 days of any such event.

5. SCE and AT&T Wireless shall comply with the notice requirements of General Order (GO) 159-A as to all agreements entered into pursuant to the authority granted herein.

6. The sharing of revenue between shareholders and ratepayers of SCE derived from the telecommunications leases entered into pursuant to the authority granted herein shall apply in accordance with the allocation rules adopted in Decision 99-09-070.

7. AT&T Wireless shall promptly serve a notification letter on the Commission, as required by Section IV.A of GO 159-A, as to whether the permits and approvals for an individual lease entered into under the agreements authorized herein have been granted by local authorities, or if no permits or approvals are necessary.

8. SCE shall promptly notify the Energy Division, in writing, of the execution of each standard lease, along with a description of the site selected.

9. Application 01-11-043 is closed.

This order is effective today.

Dated _____, at San Francisco, California.